

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/02/2004

CORAM

THE HON'BLE MR.JUSTICE N.DHINAKAR
AND
THE HON'BLE MR.JUSTICE D.MURUGESAN

WRIT APPEAL No. 465 of 2001

The General Manager
Indian Overseas Bank,
Central Office
763, Anna Salai,
Chennai-2 ..Appellant

-Vs-

1. The Presiding Officer,
Industrial Tribunal
Chennai

2. The Workmen
rep. by the President,
All India Overseas Bank Employees Union,
602, Anna Salai,
Chennai-2 ..Respondents

Writ Appeal is preferred under Clause 15 of the Letters Patent against the Order passed by a Learned Single Judge in W.P.No.12015 of 2000 dated 25.1.2001.

!For Appellant :: Mr.N.R.Chandran
Advocate General for
M/s.T.S.Gopalan & Co.,

^For respondents:: Mr.K.Chandru, S.C.,
for Mr.C.R.Chandrasekaran

:JUDGMENT

(Judgment of the Court was delivered by D.MURUGESAN,J.,)

The All India Indian Overseas Bank Employees Union raised an Industrial Dispute in as to the service conditions of Jewel Appraisers working

in Indian Overseas Bank. The Central Government by order dated 19.12.1990, referred the said dispute to the Tribunal for the following adjudication by the tribunal:-

"Whether the demand of All India Overseas Bank Employees Union to treat the jewel appraisers engaged by their bank as part time workmen of the bank is justified? If so, to what relief if any are they entitled?"

2. The said dispute was raised basically on the following averments:

The appellant bank employed about 767 jewel appraisers mainly in the rural branches in the State of Tamil Nadu, Pondicherry, Andhra Pradesh, Karnataka, Kerala and few branches of the Bank in Bihar and Orissa States. The appellant bank advances agricultural jewel loans to its constituent and to few members of the staff. These jewel appraisers are employed for particular branches of the appellant bank and are also utilised for certain clerical jobs, like entering Applications for Jewel Loans. They are also asked to go to the other branches for verification as to the appraisal of the jewels. According to the respondent-Union, these jewel appraisers are necessarily to be present in the respective branches between 10.00 a.m., and 2.00 p.m., as a request for jewel loan is considered and granted only during that period. They are paid a commission of Rs.3/= for every Rupees One Thousand sanctioned by way of loan.

3. It is further averred that similarly placed Jewel Appraisers numbering about 353 in Indian Bank with similar terms and conditions, raised a dispute for payment of wages which was adjudicated in I.D.No:25 of 1997. In view of the rival submissions, we extract the relevant portion of the reference in that case.

"Whether the action of the Management of the Indian Bank, Madras in denying to appraisers wages and other conditions of service applicable to rural clerical "Award Staff" of the Bank is justified? If not to what relief the workmen concerned are entitled to?"

4. The reference was made on the ground that the jewel appraisers of Indian Bank were workmen and they were denied only wages and other service conditions as they were paid monthly remuneration of Rs.100/=. The said dispute was adjudicated and an award was made on 3.12.1979 holding that the jewel appraisers of Indian Bank are entitled to wages and other conditions of service applicable to regular clerical award staff as part time employees of the bank and they would be entitled to such proportionate (namely half) wages and benefits of clerical staff with effect from 1.4.1977, namely, the date of the reference. This award was questioned by the management of the Indian Bank. The Writ Petition (W.P.No.1947 of 1980) was dismissed by upholding the award in the judgment reported in 1986 (II) MLJ 59. The judgment of the learned Single Judge was again taken on appeal in W.A.No: 330 and 350 of 1986 before a Division Bench and the same was dismissed by judgment dated 3.5.1990. The Special Leave Petition No.10054 of 1990 filed at the instance of the Indian Bank was also dismissed at the admission stage on 10.10.1990 by the Supreme Court. According to the respondent-Union, in view of the award passed in the case of the jewel appraisers of the Indian Bank for payment of salary on par with part time employees, they are also entitled to the same benefit.

5. This claim of the Union was resisted by the appellant Indian Overseas Bank basically on the following three grounds:-

(i) that the jewel appraisers engaged by the appellant bank are not "workmen" as defined under section 2(s) of the Industrial Disputes Act.

To support the above ground, the appellant bank heavily relied on the order of the Apex Court reported in 1992 (II) LLJ page 6 (Management of Puri Urban Cooperative Bank Vs. Madhusudan Sahu and another).

(ii) that the appellant-bank has its rural branches in various states of Tamil Nadu, Pondicherry, Andhra Pradesh, Karnataka, Kerala and has few branches in Bihar and Orissa and therefore the adjudication is possible only by a National Commission under section 17.B of the Industrial Disputes Act and not by the Industrial Tribunal before whom the dispute is referred.

We hasten to add that this point though raised was not pressed and therefore the same was not discussed and no finding is rendered by the tribunal. Equally the same was not raised before us.

(iii) The terms and conditions of the jewel appraisers of Indian Bank are entirely different with the terms and conditions of the jewel appraisers of the appellant Indian Overseas Bank. For the purpose of entitlement, more particularly, on the basis of reference, no analogy can be drawn to the award and the consequential orders of the court passed in the case of jewel appraisers of Indian Bank.

6. On the basis of the above rival pleadings, the tribunal adjudicated the reference. On behalf of the Union representing the workmen, 4 witnesses, namely, WW-1 to WW-4 were examined and Exhibits W.1 to W.2 4 were marked. On behalf of the appellant-Bank, two witnesses were examined namely MW.1 and MW.2 and Exhibits M.1 to M.14 were marked.

7. The tribunal applying the judgment rendered in Indian Bank's case as in its view the judgment in Puri Urban Cooperative Bank's case is an isolated case, ultimately answered the reference in the affirmative. The tribunal also went into comparative terms and conditions of service of Jewel Appraisers of Indian Bank and Indian Overseas Bank, namely the appellant-Bank to arrive at its conclusion. The tribunal also awarded that "the jewel appraisers should be paid half wages and benefits of a clerical staff as paid in the Indian Bank and once the jewel appraisers are declared to be entitled to get such remuneration, they cannot demand for payment of commission on the basis of loan sanctioned by the Bank as per the terms and conditions of the earlier agreement". The tribunal further awarded that "it is open to the bank to frame necessary rules fixing the service conditions of the jewel appraisers in view of the changed circumstances and it is also open to the bank to fix the nature of duties to be performed by them in view of the fact that they

have been declared to be entitled to get remuneration as part time workers."

8. The above award was questioned by the respondent-Union in so far as it was aggrieved with that portion of the award declining to give effect to the relief from 1.4.1978 i.e, the date of demand and the failure to order payment of 90% of wages and benefits of clerical staff in the Bank. Simultaneously, the appellant-Bank also questioned the award in W.P.No.12015/2000 in respect of the entirety of the award. The learned Single Judge by order dated 25.1.2001 dismissed both the writ petitions. It must be pointed out at this stage that as against the the order of dismissal of the writ petition filed by the Union no Writ Appeal is filed. The present Writ Appeal preferred by the appellant bank is in respect of the order passed in W.P.No.12015 of 2000.

9. The learned Single Judge while considering the award came to the conclusion that the true dispute referred for adjudication was not actually been adjudicated, i.e.,the actual reference as to whether the demand by the Union to treat the jewel appraisers engaged by the bank as part time workmen of the bank is justified or not was not adjudicated and instead the Tribunal went into the question as to whether the jewel appraisers engaged by the appellant bank are workmen or not. Though the Learned Judge came to such conclusion, in view of the fact that the issue is pending before the courts for over a period of 26 years, the learned Single Judge did not deem it fit to remand the matter again for fresh adjudication, but ventured to go into the rival claims based upon the pleadings and the evidence available before the tribunal and decided the issue.

10. According to the learned Single Judge, the terms and conditions of service and nature of work, would lead to the only conclusion that the jewel appraisers engaged by the appellant-bank could be treated as part time workmen, and the judgment rendered in Indian Bank case would be of benefit to them to get a favourable award on the reference.

11. The learned Single Judge also took the similar view as the tribunal has taken in regard to the non-applicability of the judgment of the Apex Court in Puri Urban Cooperative Bank's case by holding that it is an isolated case and has applied the judgment made in the case of jewel appraisers of Indian Bank. This order of the learned Single Judge is questioned in this Writ Appeal.

12. Mr.N.R.Chandran, learned Advocate General appearing for the appellant-bank would basically attack the award of the tribunal as well as the order of the learned Single Judge basically on the following grounds:-

(i) Inasmuch as the reference is only in respect of the question whether the demand of the Union to treat the jewel appraisers of the appellant bank is justified or not, the tribunal ought not to have gone beyond the scope of the reference by directing absorption of the workmen.

(ii) The tribunal erred in applying the judgment made in Indian Bank case as the terms and conditions of service of jewel appraisers of both the banks are different and consequently the tribunal ought to have applied the judgment of the Puri Urban Cooperative Bank's case reported in 1997 (II) LLJ page 6.

(iii) The award passed by the tribunal, as affirmed by the Learned Single Judge cannot be sustained, as the members of the respondent union are not "workmen" within Section 2(s) of the Industrial Disputes Act. What is relevant for bringing a person under the definition of "workman" is the manner and control of the work and in the absence of any evidence to sustain the plea as to the manner and control over the jewel appraisers by the management and the jewel appraisers are free to appraise the jewels and certify to the Manager for sanction of loan, there is no scope to bring the jewel appraisers under the definition of "workman" under section 2(s) of the Industrial Disputes Act.

13. The learned Advocate General after drawing our attention to certain portions of the evidence let in both on behalf of the workmen and the appellant bank, submitted that the evidence do not disclose the relationship of "master" and "servant" to treat the jewel appraisers as part time worker of the appellant bank. He would further add that the award popularly known as "Sastri Award" does not provide a category of part time employee and in the absence of the same, the award and the consequential order of the learned Single Judge would amount to creation of posts which does not find a place in the Sastri Award.

14. In controverting the above submissions, Mr.K.Chandru, learned senior counsel appearing for the respondent-union submits that the appellant bank is not justified in raising a question, namely, the reference in the Indian Bank case and the Indian Overseas Bank case namely, the present case, are different, as such a question was neither raised, nor adjudicated before the Tribunal and a decision was rendered. He would also submit that the said ground was not also raised before the learned Single Judge, and that it is not open to the appellant-bank to raise the question at the appellate stage.

15. In any case, Mr.K.Chandru, the learned senior counsel would submit that in terms of the definition of Section 2(k), relating to terms of employment, the reference in the Indian Bank case was made by the jewel appraisers themselves under section 10(1)(d) of the Industrial Disputes Act and the case in our hand is a reference made under section 10(2) of the Act, a joint reference at the instance of the Union. Only in the said circumstances, the term of reference in the Indian Bank case and the present case are differed. He would submit that in any case, what is relevant for consideration while adjudicating the reference is the pleadings. He would submit that when a joint reference is permissible as held by the judgment reported in 1973 (1) LLJ 273 (Vallamalai Estate Vs. Workmen of Vallamalai) and upheld in 1977 (I) LLJ 343 (Indian Bank Vs. Industrial Tribunal) the difference in reference cannot be given much weightage to deprive the claim of the workmen. He would submit that when a reference is made, the tribunal is

bound to find out the real dispute in controversy and adjudicate the same. To support the said submission, the learned senior counsel would rely upon the judgments reported in 1953 (I) LLJ 174 (State of Madras Vs. C.P. Sarathy) and 1967 (I) LLJ 423 (Delhi Cloth and General Mills Ltd., Vs. Their Workmen and others).

16. He would also rely upon a Division Bench judgment of this court in 1979 (I) LLJ 465 (D.B) (Management of Addison & Co., Vs. the Presiding Officer, Labour Court, Madras and others) in this regard as well as the judgment of the Supreme Court in 1978 (II) LLJ 11 (Indian Express Vs. Employees Union). Placing reliance on the above judgments, the learned senior counsel submitted that there is nothing wrong in the tribunal in going into the rival pleadings as contained in the claims statement and the counter affidavit and pass an award on the basis of the same, but in conformity with the reference. He would submit that the power of the tribunal is wider in passing the award and in that event the tribunal was right in answering the reference in the affirmative as well as issuing the consequential directions. In this regard, he would refer to the judgment in W.I Automobile Association Vs. Industrial Tribunal, Bombay, reported in AIR 1949 Federal Court, 111.

17. The learned senior counsel would submit that in so far as the question of workmen, what is relevant is the nature of duties and responsibilities entrusted to a workman and also the indispensableness of the person employed in the nature of business. Merely because a person employed is not asked to attend the full office hours and is not asked to make any application for leave and he is allowed to go from the office after his job is over, that will not disentitle the said person from claiming himself to be a "workman" as defined under section 2(s). In this regard he would rely upon the following judgements:-

(i) 1957 SCR 152 (SC) 152
(Dharangadhara Chemical Works Ltd., Vs. State of Saurashtra)

(ii) 1973 (II) LLJ 495 (SC)
(Silver Jubilee Tailoring House Vs. C.I. Of Shops & Estates)

(iii) 1974 (I) LLJ 367 (S.C)
(Mangalore Ganesh Beedi Works. Vs. Union of India)

(iv) 1978 (4) SCC 257
(Hussainbhai, Calicut Vs. The Alath Factory, The Zhilali Union, Kozhikode and others)
and

(v) 1999 (I) LLJ 1086
(Secretary, Haryana State E.B., Vs. Suresh & others)

18. In so far as the contention of the Learned Advocate General as to the applicability of the judgment in Puri Urban Cooperative Bank's case, the learned Senior Counsel would submit that it was an isolated case of termination of an employee. The Apex Court has considered only the question of termination of an individual employee. On the other hand, the issue in the jewel appraisers of Indian Bank was in respect of the entire jewel appraisers of the said Bank and the law laid down in the said case alone would be more appropriate for applying to the case of the workmen in this case. Hence he would submit that neither the tribunal, nor the learned single Judge have erred in applying the judgment rendered in Indian Bank's case.

19. In so far as the nature of appointment, terms and conditions of employment and service and the responsibility of jewel appraisers, the learned senior counsel also drew our attention to certain portions of the evidence let in by the Union as well as by the appellant-bank and contended that the bank's control over the jewel appraisers is vested in the Managers in appraising the jewels including the manner in which the jewel is appraised. By placing reliance on the evidence, the learned senior counsel would submit that the jewel appraisers of Indian Overseas Bank are "workmen" under section 2(s) and therefore there is nothing wrong in the tribunal in answering the question in the affirmative.

20. Mr.N.R.Chandran, learned Advocate General by way of reply would once again reiterate that the law declared in respect of one case is not automatically made applicable to other case as the same should be applied only on the facts of each case. He would submit that though the Apex Court on the facts of the case found that Canteen workers of Indian Overseas Bank were held to be workmen in the judgment reported in 2001 (I) LLJ 1618, considering the terms and conditions of service, the Apex Court also found that the canteen workers employed in the State Bank of India, are not workmen in the judgment reported in 2001 (I) LLJ 1441. Similarly, the learned Advocate General submitted that the Apex Court has held that canteen workers of Reserve Bank of India are not workmen in the judgment reported in 1996 (II) LLJ 42.

21. We have given our anxious consideration to the rival submissions. In so far as the challenge to the reference itself, we are not inclined to accept the said submission for the simple reason that the said point has not been raised either before the Tribunal or before the Learned Single Judge. In fact, we have perused the counter statement filed by the appellant-bank before the tribunal and we are unable to trace out such a ground in the said counter. That apart, that issue was not argued before the tribunal and hence there was no adjudication. Again, on a perusal of the number of grounds raised in the writ petition, we do not find either any such ground has been raised or argued before the learned Single Judge. We afraid that in the absence of the same, the appellant-bank could be allowed to raise the said question at this stage.

22. Be as it may, the reference made in the case of the jewel appraisers of Indian Bank could be traced to Section 10(1)(d) of the Industrial Disputes Act. Section 10(1)(d) relates to a reference of an "industrial dispute" to the Tribunal when it relates to any matters specified in the II schedule or III schedule for adjudication. This dispute is

referable at the instance of the workman aggrieved concerned. In that context only, when a dispute was raised as to the wages, a reference was made to treat the jewel appraisers of Indian Bank as workmen for payment of wages on par with the part time or with other employees of the bank. In our case, the dispute was raised by the All India Overseas bank Employees Union, representing the workmen. This dispute is referable to Section 10(2) of the Industrial Disputes Act, namely a joint dispute. Such a dispute in respect of jewel appraisers at the instance of the Union is possible in view of the definition of "industrial dispute" as defined under section 2(k) of the Act. The said definition reads as under:-

"2(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non employment or the terms of employment or with the conditions of labour, of any person"

23. In that context only, the dispute was referred by the Government for adjudication as to the demand of the Union to treat the jewel appraisers as part time workmen, was justified or not. Further, whether a joint reference is possible or not came up for consideration before a Division Bench of this Court in Vallamalai Estate Vs. Workers of Vallamalai, reported in 1973 (1) LLJ 273. K.Veerasingam, Chief Justice (as he then was) speaking for the Bench held in para 4 as follows:-

"4. We are clear therefore that the Presiding Officer's jurisdiction being entirely basically depending on an existing or an apprehended industrial dispute, the appellant was not estopped in this case from contending lack of jurisdiction in presiding over notwithstanding that the reference was made on a joint application under section 10(2) of the Industrial Disputes Act."

24. In fact, in that case, though the dispute was raised by workmen, in view of the fact that it can be treated as a joint application by the workers, the Division Bench held that such dispute though made under Section 10(1)(d), could be treated as a joint dispute under section 10(2) of the Industrial Disputes Act.

25. From the above judgment, we find that joint dispute raised under section 10(2) of the Act can be the basis for adjudication on a reference as it is pointed out before us that the second respondent-Union has membership of 18000 employees, out of which, jewel appraisers represent 700.

26. Coming to the question as to whether the power of the tribunal in adjudicating a dispute, strictly in terms of reference, Courts have held that a reference is primarily a cause for adjudication by the Labour Court or tribunal, as the case may be, and that does not mean the Labour Court or Tribunal is disentitled from looking in to the pleadings and to find out the real dispute for adjudication. This power of the Tribunal is based on the principles to render substantial justice to the parties coming to the court for adjudication. It is relevant to refer to the Division Bench judgment of Patna High Court in Minimax Vs. its Workmen, reported in 1968 (1) LLJ 369, as to the power of the Tribunal in adjudication. The relevant portion reads

thus:-

"It is significant to note that the point in issue, with which we are concerned in this case, has been referred in more or less identical terms as recommended by the Assistant Labour Commissioner, Jamshedpur. Therefore, the finding of the tribunal as to what was really the dispute and the demand of the workmen is not only supported by the pleadings before the tribunal, but also by the report on which basis the reference in question has been made. Sri Lal Narayan Sinha also has not challenged the correctness of the finding of the tribunal as to what was really in dispute between the parties. What he has challenged is the jurisdiction of the tribunal to construe the reference so as to bring out the real dispute for its decision. That the Tribunal not only has such power but a duty is cast on it to find out what was the real dispute which was referred to it and to decide it and not to throw it out on mere technicality, finds ample support from the following observations of their Lordships of the Supreme Court in the case of State of Madras Vs. C.P.Sarathy and another (1953(I) LLJ 174).

"The scope of adjudication by a tribunal under the Act is much wider, as pointed out in Western India Automobile Association Vs. Industrial Tribunal, Bombay, (1949 LLJ 245), and it would involve no hardship if the reference also is made in wider terms provided, of course, the dispute is one of the kind described in S.2(k) and the parties between whom such dispute has actually arisen or is apprehended in the view of the Government are indicated either individually or collectively with reasonable clearness. The rules framed under the Act provide for the tribunal calling for statements of their respective cases from the parties and the disputes would thus get crystalized before the tribunal proceeds to make its award. On the other hand, it is significant that there is no procedure provided in the Act or in the rules for the Government ascertaining the particulars of the disputes from the parties before referring them to a tribunal under S.10(1)."

27. We may also refer to the judgment in Delhi Cloth and General Mills Company Ltd., Vs. Their Workmen and others reported in 1967 (I) LLJ 423, where their Lordships of the Supreme Court held thus:-

"...In our opinion, the tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble..."

28. A Division Bench of this Court in Management of Addison and Co., Vs. Presiding Officer, Labour Court, Madras and others, reported in 1979 (I) LLJ 465 has also taken the similar view. The relevant portion of the order reads as under:-

"....We are aware that the jurisdiction of a tribunal springs from the reference. Does it mean that it should be construed in a rigid fashion so as to deny justice to parties or in the alternative does it mean that it should be construed in a broad sense to meet the ends of justice? We should prefer the latter."

29. A perusal of the above judgments indicate that the jurisdiction of the Tribunal springs from the reference. It cannot be construed in a rigid fashion so as to deny justice to the parties. What is required while considering the jurisdiction of the Tribunal is only the ultimate justice which we have referred to earlier as "to render the substantial justice". In that view of the matter, we are unable to agree with the submission of the learned Advocate General that the Tribunal has exceeded its jurisdiction in moulding the prayer by giving a direction for payment of salary on par with part time workers and also framing rules or regulation, as the same would amount to absorption of the jewel appraisers.

30. This leads us to the next question as to whether the learned Single Judge was right in discussing the merits of the case, more particularly, having come to the conclusion that the parties did not actually pleaded for adjudication as to the point in reference before the tribunal. We cannot ignore the vital fact that the issue in question has been boiling for over a period of 26 years. The learned Judge has taken note of the same in coming to the conclusion that instead of further remittance to the Tribunal for adjudication, as it involves considerable time for rendering justice, the learned Judge taken the task of appreciating the evidence and given a finding.

31. Our attention was not drawn as to the lack of power of this court under Art.226 to consider the materials available before the tribunal in cases where those materials are not considered by the tribunal while passing the award and whether remand in such case is warranted or not. In the event, this court could consider that the remand may not serve the purpose, it can without any further controversy, resolve the dispute by considering the evidence in exercise of power under Article 226 of the Constitution of India. It is one thing to argue that when the Tribunal appreciated the evidence, this court in exercise of power under Art.226 of the Constitution of India, will not venture into re-appreciating the evidence and come to a different conclusion. Courts have held that this court can interfere with the award only if it is perverse and the same is not supported by any material. We are also conscious of the fact that if there are some material available on record before the tribunal which form the basis for a finding, this court shall not venture into re-appreciate the said evidence. However, the case on hand is entirely different inasmuch as the point in issue was not discussed by the tribunal with reference to the evidence in full which only necessitated the learned Single Judge to appraise the evidence.

32. That apart, we find that the learned Single Judge did not disagree with the findings of the tribunal, but has added his further reasons to support the findings in the award. In that view of the matter, we are not impressed by the argument of the learned Advocate General in submitting that

the learned Judge, instead of taking the task of assessing the evidence by himself, ought to have remanded the matter.

33. The further question to be considered is that whether the award of the tribunal or the order of the learned Single Judge would by itself amount to a direction for absorption of the jewel appraisers? Though the learned Advocate General submitted that it would amount to automatic absorption, we do not find any such direction either in the award or in the order of the learned Single Judge, except a direction in answering the reference in the affirmative. Since the above argument is advanced, we would like to extract the operative portion of the order of the learned Single Judge modifying the award of the tribunal in para 32 which reads as follows:-

"32. Therefore, I do not find any flaw in the relief granted by the Tribunal for the various reasons and considerations of materials placed before it, which established the claims of the jewel appraisers to treat them on par with the part time employees of the bank. I therefore, affirm the award of the Tribunal dated 7.9.1999 made in I.D. NO.13 of 1990 for all the reasons mentioned herein. Both the writ petitions fail and the same are dismissed.

34. In fact, this position is not disputed by Mr.K.Chandru, learned senior counsel appearing for the respondent-Union. The learned senior counsel submitted that the learned Single Judge did not make observations as contended by the Advocate General.

35. The next question to be considered is as to whether the demand of the Union to treat the jewel appraisers of the appellant-Bank as part time employees of the appellant-bank is justified or not? The learned Single Judge, as we already pointed out, had gone into the merit of the case to find out the nature of the job performed by Jewel Appraisers and accordingly in paragraph 24 of the order, given his own reasons and concluded that the job of Jewel Appraisers are indispensable and they were also made to do clerical work. We are not inclined to interfere in the said factual findings of the learned Single Judge. That apart, we ourselves have perused the evidence and the documents that were relied upon by the respective counsel and we are satisfied that the job of the Jewel Appraisers are indispensable and they were also asked to do clerical job. Further, they are under the supervision of the respective Managers of the Banks inasmuch as it is not mandatory on the part of the Managers to sanction the loan merely on the basis of the certificate issued by the Jewel Appraisers and the Managers themselves should satisfy as to the genuineness of the request.

36. It is further contended that a category of part time employee was not contemplated when Sastri Award was initially made. In this respect our attention was drawn to the bipartite settlement entered into between the management of the appellant bank and the recognised Union wherein a provision for part time employees as well as their terms and conditions are provided. In view of the above, we do not find that merely because a category as part

time employee was not included in the Sastri Award, that would not disentitle the jewel appraisers to be treated as part time employees, in view of the subsequent bipartite settlement.

37. In view of our above findings, the core question to be considered now is, namely, whether on the facts of this case, the judgment rendered in respect of Jewel Appraisers of Indian Bank should be applied or whether the judgment in Puri Urban Cooperative Bank case shall alone be applied? It is true that the judgement of the Apex Court in Puri Urban Cooperative Bank Case is later in point of time and this court should normally follow the judgment of the latter judgment. However, as rightly pointed out by Mr.K.Chandru, learned senior counsel, it was an isolated case of a workman whose services were terminated, who raised a dispute. Considering the nature of the case, more particularly, with reference to the terms and conditions in that Bank, the Apex Court came to the conclusion that he cannot be considered as a workman though in the normal parlance he is known as workman. But the issue as to whether jewel appraisers of a Bank was directly considered in the Indian Bank's case at the instance of all the Jewel Appraisers. The said reference was in respect of parity in wages with award staff and the reference was answered treating the jewel appraisers of Indian Bank as part time employees with benefits. The Writ Petition No. 1947 of 1980, challenging the said award was dismissed (The Indian Bank rep. by the General Manager, Madras-1 Vs. The Workmen rep. by the Secretary, Indian Bank appraisers' Association and another [1 986 (II) LLJ 59]). The learned Single Judge in the said Writ Petition also taken into consideration the nature of job of the workers.

38. Except the difference, namely, in the case of jewel appraisers of Indian Bank, that they were paid a monthly wage of Rs.100/= and in the case of jewel appraisers of appellant-bank they are paid commission, there is no other difference. In so far as the payment of commission, clause (iv) of sub section (rr) of Section 2 of the Industrial Disputes Act describes that "any Commission payable on promotion of sales or business or both could be considered as wages". Applying the definition as it is admitted that the jewel appraisers of the appellant-bank are paid commission of Rs.3/= per every one thousand rupees sanctioned by way of loan, such payment should be considered as wages under the definition of wages. If once the above conclusion is arrived at, we absolutely do not have any hesitation to hold that the above judgment in the case of jewel appraisers of Indian Bank is applicable in all fours to the facts of the present case. We may also point out that this order of the learned Single Judge was taken on Writ Appeal in W.A.No.330 of 1986 and the Division Bench in fact after elaborately considering the submissions and the various judgments of the Apex Court, approved the view of the learned Single Judge. In fact, it was considered in the said judgment that the jewel appraisers of Indian Bank are also performing clerical jobs.

39. We may usefully refer to the judgment of the Apex Court reported in 2001 (1) LLJ 1045 (Indian Banks Association Vs. Workmen of Syndicate Bank and others). The Apex Court considered the question as to whether the Deposit Collectors of Banks are "workmen" and commission received by them is wage? Considering the fact that the collection agents appointed for implementation

of schemes which is remunerative to the banks, it was also observed that the Banks have introduced the schemes because they want to encourage the common man to make small and regular deposits and as a result of such commission, the number of depositors have become much larger. In that view of the matter, the Apex Court found that the schemes are continued because the banks find them remunerative. Accordingly, the Supreme Court held that such Deposit Collectors shall be considered to be "workmen" within the meaning of Section 2(s) of the Act.

40. Mr.N.R.Chandran, learned Advocate General brought to our notice Ex.W.20 to contend that instructions were given that the jewel appraisers shall not be entrusted with any work other than jewel appraising. But from the evidence of WW-1 to WW-3 as well as MW-1, we find that the jewel appraisers are also allowed to fill up the forms, which are later handed over to the Manager for his verification and to make entries in the registers. The Manager if only satisfies with the form, entrust the job of placing the jewels to the jewel appraisers for further certification. Hence, while appreciating the evidence, this court has to take the reality into consideration. Circulars might have been issued. But the question is whether such circulars were given effect to in their letter and spirit. Factually, the jewel appraisers are allowed to do clerical jobs also as seen from the evidence let in not only on behalf of the workmen, but also by the management.

41. In the Indian Bank's case, though a claim was made for equal scale of pay on par with permanent employees, the Division Bench considering the nature of part time clerical job, only awarded salary as paid to the part time clerks. In this case also the learned Single Judge has adopted the same method. The order in the Indian Bank's case was further questioned before the Apex Court in S.L.P.No.10054 of 1990 and the same has been dismissed at the admission stage itself. Though an argument was advanced by the learned Advocate General that the dismissal of the S.L.P cannot be considered for the present case, under Art.141 of the Constitution of India, we are not inclined to go in to that question as by virtue of dismissal of the S.L.P, the judgment of this court made by the learned Single Judge as well as the Division Bench was approved and confirmed by the Supreme Court.

42. Therefore, we do not find any merit in the contention that the judgment of jewel appraisers in Indian Bank's case cannot be pressed into service for the jewel appraisers of Indian Overseas Bank, namely the appellant-bank. We are entirely in agreement with both the Tribunal as well as learned Single Judge in applying the judgment of the jewel appraisers of Indian Bank case. For all the reasons stated above, we hold that no interference is called for in this matter and consequently, the Writ Appeal fails and the same is dismissed. No costs.

Internet: yes

Index: yes

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